

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

JAMES GUY

PLAINTIFF

VERSUS

CIVIL ACTION NO. 2:05cv2141KS-JMR

STATE OF MISSISSIPPI, et al.

DEFENDANTS

ORDER

This cause is before the court on plaintiff's response [document #5] filed February 16, 2006, to the order filed January 25, 2006. Having considered the arguments raised in the response, the court finds that the response is not well-taken.

On November 4, 2005, the plaintiff filed this complaint pursuant to 42 U.S.C. § 1983, alleging violations of his civil rights regarding the results of a disciplinary hearing.

An order was entered on November 15, 2005, denying plaintiff's motion to proceed in forma pauperis pursuant to 28 U.S.C. § 1915(g)'s "three-strikes rule." Section 1915(g) states:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

This court found that the plaintiff had on three occasions "brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or

fails to state a claim upon which relief may be granted." The order directed the plaintiff to pay the \$250.00 filing fee within 30 days from the entry of that order.

The plaintiff argues in his response [document #5] that being found guilty of the Rule Violation Report allegedly without supporting evidence "will cause substantial injury to the plaintiff negating plaintiff's opportunity to be released." The plaintiff's argument raised in his response does not meet the exception provision of 28 U.S.C. § 1915 (g). Section 1915(g) requires that the plaintiff be under "imminent danger of serious physical injury."

Having reviewed the allegations in the plaintiff's original complaint, the court finds no assertions which indicate that the plaintiff was facing serious *physical* harm at the time he filed this complaint. In sum, the plaintiff's complaint fails to allege, much less establish that he was under imminent danger of serious physical injury at the time of filing this complaint.

Banos v. O'Guin, 144 F.3d 883, 884-85 (5th Cir.1998); Choyce v. Domiguez, 160 F.3d 1068 (5th Cir.1998). Accordingly,

IT IS ORDERED

1. That plaintiff's response [document #5] is not well-taken.

2. That the plaintiff has 15 days from the entry of this order to pay the filing fee of \$250.00. If the filing fee is paid

by the plaintiff or someone other than the plaintiff, there must be a written explanation that the money is being submitted as payment of the filing fee in this case (2:05cv2141KS-JMR) on behalf of the plaintiff, James Guy #59652.

3. That if the \$250.00 filing fee is not received within 15 days from the entry of this order plaintiff is warned that this action **will** be dismissed.

4. That the plaintiff is further warned that failure to keep this court informed of his current address may result in this case being dismissed.

SO ORDERED this the 23rd day of February, 2006.

s/ *Keith Starrett*
UNITED STATES DISTRICT JUDGE